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cause him to pause and make an inquiry which would necessarily have resulted in the discovery of the fact.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 508.]

Error to Corporation Court of Norfolk.

Action by J. H. Cofer against the Great Atlantic & Pacific Tea Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Willcox, Cooke & Willcox, of Norfolk, for plaintiff in error.

E. R. F. Wells, of Norfolk, for defendant in error.

WHITEHURST *v.* BURGESS et al.

June 16, 1921.

[107 S. E. 630.]

1. Covenants (§ 20*)—Implied Restriction as to Use of Property Is as Effective as if Expressed.—If it is apparent from the whole deed that it carries by definite and necessary implication a restriction against the use of the property for other than residential purposes, such restriction is as effective as if made in positive and definite terms.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 744.]

2. Deeds (§ 93*)—Construed as a Whole to Ascertain Intention of the Parties.—In the construction of deeds, the object of the court is to ascertain the true intention of the parties, and to ascertain such intention all parts of the deed should be taken and considered together.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 419.]

3. Covenants (§ 49*)—Restrictions as to Use of Property Construed with Reference to Situation.—The covenants in a deed restricting the use of the property should be considered with reference to the situation of the property affected and its present and prospective use, and should be construed to give effect to the intention of the parties.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 754.]

4. Covenants (§ 51 (2)*)—Restriction Held to Limit Use of Lots to Residential Purpose.—A restriction in the deed to lots in a subdivision, in which all the property was under similar restrictions, that four lots should constitute a building site for one residence only, when construed with other restrictions, which were intelligible when related to residences, but not to commercial buildings, restricted the use of the lot

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

to residential purposes, though there was no express prohibition against the erection of buildings for other purposes.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 754.]

Appeal from Circuit Court, Norfolk County.

Suit by W. B. Burgess and others against E. M. Whitehurst to enjoin the building of a store building on certain lots. Decree for complainants, and defendant appeals. Affirmed.

Pender, Way & Foreman, of Norfolk, for appellant.

E. R. F. Wells and *Wm. T. Higgins*, both of Norfolk, for appellees.

OLDAKER *v.* VIRGINIA RY. & POWER CO.

OLDAKER *v.* SAME.

June 16, 1921.

[107 S. E. 634.]

Railroads (§ 350 (33)*)—Evidence Held to Make Motorman's Negligence under Last Clear Chance Rule a Question of Fact.—In an action for damages resulting from a collision between an interurban car and four mules being driven by a boy, evidence that when the boy started to cross the double track of defendant's railroad line a car was approaching from each direction at substantially equal distance, and that one motorman stopped his car before reaching the crossing, held to show that the motorman of the other car had the last clear chance to avoid the accident after he could have discovered plaintiff's peril, but that he failed to sound warning or to stop or even check the speed of his car, and hence the court erred in sustaining defendant's demurrer.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 574.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Norfolk County.

Separate actions of trespass on the case by A. L. Oldaker, an infant, and by A. A. Oldaker against the Virginia Railway & Power Company, tried together by consent of parties. There were judgments for the defendant in each case, when the trial court sustained the demurrer to the evidence after verdicts for plaintiffs, and the plaintiffs bring error. Reversed, and final judgment rendered for plaintiffs.

S. M. Brandt, of Norfolk, for plaintiffs in error.

Williams, Loyall & Tunstall, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.